

05-18-00567-CV

***In the Fifth Court of Appeals
Dallas, Texas***

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
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LISA MATZ
Clerk

DARLENE C. BALISTRERI-AMRHEIN,
Appellant

v.

ATTORNEY LENNIE BOLLINGER, *et al.*
Appellees

**On Appeal from the County Court at Law No. 6
Of Collin County, Texas
Cause Number 006-02654-2017**

**APPELLEES' RESPONSE IN OPPOSITION TO
APPELLANT'S MOTIONS FOR STAY**

Appellees Attorney Lennie Bollinger and Wormington & Bollinger Law Firm (collectively "Bollinger") present this Response in opposition to Appellant Darlene C. Balistreri-Amrhein's ("Amrhein") (1) "Appellant's Motions for Stay and Abatement of This Appeal for 'Good Cause' Reasons on March & April Court Orders and on Payment Arrangements for All Court Reporters' Transcripts and All Court Clerks' Records by April 8, 2019," filed on April 4, 2019 (hereinafter "April 4 Motion to Stay"), and (2) "Appellant's Motion to Stay This Appeal For 'Good

Cause’ Reasons,” filed on April 5, 2019 (hereinafter “April 5 Motion to Stay”) (collectively, “Motions to Stay”), and state as follows:

I. INTRODUCTION

This appeal arises from the trial court’s order dismissing Amrhein’s lawsuit because she failed to post security after being declared a vexatious litigant. More specifically, on April 5, 2018, the trial court entered its Order Granting Defendants’ Motion to Declare Plaintiff a Vexatious Litigant and to Require Security. (CR 1934-1935). Pursuant to that April 5, 2018 Order, Amrhein was required to provide security by obtaining a bond in the amount of \$160,000.00 no later than May 5, 2018 at 5:00 p.m. (CR 1935). Amrhein did not provide security as required by the April 5, 2018 Order. (CR 2082). Accordingly, on May 8, 2018, the trial court entered an Order dismissing Amrhein’s claims with prejudice pursuant to Texas Civil Practice & Remedies Code § 11.056, which states that a court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish security within the time limit set by the order. (CR 2082). Amrhein appealed shortly thereafter. (CR 2090).

On February 6, 2019, Amrhein filed her Amended Appellant’s Brief. On March 8, 2019, Bollinger filed his Appellees’ Brief. Although Amrhein

attempted to file a Reply Brief, Amrhein's Reply Brief exceeded the word count limitations. Accordingly, on April 1, 2019, this Court struck Amrhein's Reply Brief. Amrhein also filed a motion "to supplement this court record," which this Court construed as requesting, in part, a review of the trial court's order sustaining the contest to Appellant's inability to afford costs. *See* this Court's April 1, 2019 Order at 2. This Court affirmed the trial court's order sustaining the contest and ordered Amrhein to file a written verification by April 8, 2019 that she made arrangements to pay the reporter's fee. *Id.* Assuming Amrhein filed a verification by April 8, 2019 that she had made arrangements to pay the trial court reporter's fee, the Court would then allow for filing any amended briefs. *Id.* But Amrhein failed to file any verification by April 8, 2019. As such, briefing in this appeal is complete. Moreover, as explained in more detail in Appellees' Brief, this appeal may be submitted on the briefs without necessitating oral argument. Thus, abatement of this case is simply not warranted.

Amrhein gives no compelling reasons for a stay, and her desire for more time to supplement her briefing and to file other lawsuits has no bearing on the Court's disposition of this case. Further, Amrhein appears to confuse, or at least conflate, this appeal with her other appeal, 05-18-01493-CV, regarding her

unrelated case against Prosperity Bank. Amrhein's request for a stay should be rejected by this Court.

II. ARGUMENT AND AUTHORITIES

Because the briefing period has ended, there is no reason that this appeal should be stayed or abated and certainly Amrhein has provided no cogent reason to stay this appeal. Amrhein appears to ask for a stay for two unavailing reasons: (1) to allow time for her to file "several federal actions on these 'Civil Rights' violations" with countless federal and state agencies before this appeal is decided (April 4 Motion to Stay, page 8); and (2) to allow more time to submit pleadings from "outside cases" for this Court's consideration (April 5 Motion to Stay, page 2).¹ Neither of these reasons is appropriate to stay this case.

First, in her April 4 Motion to Stay, Amrhein seeks a stay because

Appellant will be filing several federal actions on these 'Civil Rights' violation with criminal division, additional United States Department of Justice formal complaint, RICO formal complaint, other federal authorities against all participants and the State of Texas, formal complaints to Attorney General Ken Paxton, Governor Greg Abbott, Lt. Governor Dan Patrick, including Commission on Judicial Misconduct, federal & Texas Banking authorities, business practices, illegal acts, violations of employment laws, false reporting to IRS & other agencies like EEOC, including licensing of certified Court Reporters,

¹ Amrhein also argues that she should not have to pay for the reporter's record, but this issue has already been decided by the Court, so it will not be addressed herein. *See* Memorandum Opinion on Motion to Review Trial Court Order Sustaining Contest to Appellant's Statement of Inability to Afford Court Costs, April 1, 2019.

etc. for Federal & Texas investigations **before this Appeal & lawsuit continues** involving Texas[.]

(April 4 Motion to Stay, page 8 (emphasis added)). Delaying this appeal so that Amrhein can file unrelated complaints with agencies and file additional suits in other jurisdictions is not a proper basis for this case to be stayed. Amrhein has provided this Court with no explanation as to how such potential filings affect or relate to this current appeal.

Most of Amrhein's April 4 Motion to Stay addresses a different appeal pending before the Court—*Amrhein v. Prosperity Bank, et al.*, Cause No. 05-18-01493-CV. In fact, eight pages of the nine-page Motion to Stay, as well as most of the exhibits attached thereto, seem to address issues found in her Prosperity Bank appeal and do not even mention Bollinger or the issues on appeal in this case.

Next, in her April 5 Motion to Stay, Amrhein requests the case be abated for 30 days so that she can supplement her briefing with “outside cases.” (April 5 Motion to Stay, page 2). However, this Court has already denied Amrhein's previous request to supplement the record with documents and transcripts from other cases. (Order, March 20, 2019). The Court found that “any documents and transcripts from other cases shall not be included in the appellate record of this cause unless considered by the trial court.” (*Id.*) In her April 5 Motion to Stay, Amrhein does not identify the materials she wishes to include nor does she specify that these “outside cases” were considered by the trial court. Thus, her request to

stay this case must be denied by this Court, as it is not apparent that any supplement would be properly included in Amrhein's briefing or in the record. *See Sabine Offshore Serv., Inc. v. City of Port Arthur*, 595 S.W.2d 840, 841 (Tex. 1979) (holding that appellate courts may not consider materials outside of the record on appeal except to determine its own jurisdiction); *see also Watts v. Hancock*, No. 05-12-01635-CV, 2014 WL 2807955, *2 (Tex. App.—Dallas June 18, 2014, no pet.) (same). Further, Bollinger's use of "outside cases," such as the cases supporting his Motion to Declare Amrhein a Vexatious Litigant in the trial court, does not support Amrhein's request to use materials from other cases because any documents and transcripts used by Bollinger on appeal were actually considered by the trial court and included in the record on appeal. (*See* April 5 Motion to Stay, page 1). Thus, Amrhein's request for a stay of this cause to supplement her briefing or the record should be rejected.

CONCLUSION AND PRAYER

As she did in the trial court and now on appeal, Amrhein seeks to delay the disposition of this case for meritless reasons. **Accordingly**, Appellees Attorney Lennie Bollinger and Wormington & Bollinger Law Firm request that this Court deny Appellant's Motions for Stay.

Respectfully submitted,

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RULE 9.4 CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 1,227 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Katherine Elrich

KATHERINE ELRICH

CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served via e-service, e-mail and U.S. First Class Mail to Appellant, *pro-se*, on the 11th day of April, 2019.

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/s/ Katherine Elrich
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